



## **Federal Mediation and Conciliation Service International Labor and Dispute Resolution Services June 2011**

### **I. FMCS Background**

The Federal Mediation and Conciliation Service (FMCS) is a unique U.S. government agency with more than sixty years of experience resolving labor-management conflicts and promoting cooperative workplace relationships. Established in 1947 to mediate domestic labor disputes and provide arbitration services, the Agency now provides a wide range of conflict management programs in the U.S. and many other parts of the world. In its international projects, FMCS strives to build local capacity for labor administration and inspection, collective bargaining, mediation and dispute resolution in partnership with local government institutions and representatives of labor and management.

FMCS international program development, project management and service delivery is provided by professional staff with significant international experience. In addition, the Agency draws on the expertise of a field staff of 165 full-time mediators/trainers to deliver the Agency's international services. In just the past ten years, FMCS has delivered services in countries with a wide variety of training and development needs such as: Argentina, Australia, Brazil, Bulgaria, Cambodia, Chile, China, Colombia, Croatia, the Czech Republic, Hungary, Iceland, Indonesia, Ireland, Latvia, Lithuania, Mexico, Morocco, Mozambique, Northern Ireland, Oman, Peru, Romania, Serbia & Montenegro, Slovenia, South Africa, South Korea, Tajikistan, Taiwan, Thailand, Uganda, and Vietnam.

### **II. FMCS International Programs and Services**

FMCS recognizes that, fundamentally, constructive labor-management relationships and collective bargaining provide workers and companies with the most enduring tools for achieving productivity, innovation and competitiveness – the central ingredients of an equitable, stable, and growing economy. The pressures of the global economy, however, often result in labor practices that fail to balance the needs of workers and their employers. Developing market economies may not have the legal frameworks or government institutions necessary to address these concerns. For this reason, FMCS services are often provided to trading partners, who have committed to enact or enforce progressive labor laws, but who lack the experience, skills, or institutional capacity to do so.

Implementing effective systems of labor administration and inspection is essential to ensuring worker participation, business productivity, and economic stability. This is the special expertise that FMCS delivers through comprehensive and individually tailored programs designed to help foreign government and civil society build their capacity to manage and resolve labor conflicts. FMCS services fall into three general categories:

**Education and Training:** Instructing labor, management, and government officials in industrial relations practices, negotiation skills, grievance handling, mediation techniques, and other conflict resolution processes, including traditional collective bargaining, interest-based problem solving, and the training of enterprise-level labor-management committees.

**Mediation and Facilitation Services:** Providing experienced professionals to facilitate consensus building and other collaborative exercises that address the interests of all parties, including labor, management, and government, and, thereby, promote economic growth and legal or institutional reform.

**Labor Relations and Conflict Resolution Systems Design:** Helping craft and implement legal or administrative systems and structures for promoting worker participation, fair employment practices, and prompt, transparent conflict resolution, including consulting to form and/or build the capacity of governmental or tripartite institutions for the provision of labor administration and inspection services.

### **III. Examples of FMCS International Projects**

Over the years, FMCS has designed systems and delivered labor administration and conflict resolution training programs in many countries, with different needs and at varying stages of political and economic development. The following are some examples of FMCS international projects; a more comprehensive listing of FMCS international training projects over the past ten years is attached to this memorandum as Attachment 1.

**China:** FMCS mediators trained labor-management committees at the enterprise level to resolve workplace issues, with specific emphasis on how to set up labor relations committees, schedule and conduct meetings, communicate effectively, engage in interest-based problem solving, present “grievances” and resolve disputes. The Agency also developed a mediator training pilot program, which included in-depth mediator training and instruction in conflict management techniques.<sup>1</sup>

**Asia/Southeast Asia:** FMCS has an ongoing presence in a number of Asian and Southeast Asian countries, including Vietnam, Cambodia, Thailand, Korea, Indonesia, and Taiwan.

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<sup>1</sup> Much has changed in the PRC since these early programs were designed and delivered. FMCS has proposed a new round of technical assistance and cooperative training programs in the areas of collective consultations and bargaining. The Agency has developed Mandarin-translated training materials covering such topics as the negotiations process, the typical structure of a collective agreement, preparation for collective bargaining, information gathering, joint sessions, and settlements.

Agency mediators deliver training and capacity-building programs in negotiations, conflict resolution, labor administration and inspection, and labor relations systems design.

**Oman:** Two FMCS mediators will conduct a training program in September, 2011, providing modules on improved labor-management relations, collective bargaining, mediation and negotiations, communications skills, as well as “best practices” using a combination of role-plays, discussions, lectures, DVDs, and group exercises. The assessment phase of this project was conducted in June, 2011 and included interviews, consultations, and meetings with officials at the US Embassy-Oman and key stakeholders, such as labor, management, government and NGOs to inform the design and delivery of the September training.

**Morocco:** In July 2010, FMCS completed the assessment phase of a multi-stage project to teach labor inspectors how to use negotiation and mediation techniques to more effectively perform their duties. Two FMCS mediators, in coordination with the US Consulate officer, met with officials from the Moroccan Ministry of Labor, groups of labor inspectors, and other social partners (business leaders, union officials and NGOs) to gain an understanding of the economic, political, and cultural landscape impacting the labor inspection system. As a result of this assessment, FMCS mediators will conduct trainings for labor inspectors in several cities in Morocco in September 2011. The program will include the following modules:

- Understanding the causes of conflict
- Communications and listening skills
- Introduction to negotiations and mediation
- Mock negotiations and mediations
- Interest-based problem solving
- Agreement drafting
- Ethics of dispute resolution
- Best practices and next steps (metrics and capacity building)

**The Americas:** FMCS delivered workplace conflict resolution, interest-based bargaining, communications skills and mediation training in a number of countries, including Argentina, Colombia, El Salvador, Peru, Panama, Mexico, Venezuela, and Brazil. These projects strengthened the capacity of local government officials, workers, and employers to peacefully and expeditiously resolve workplace disputes. In June 2011, FMCS assisted the Department of Labor’s (DOL) Bureau of International Labor Affairs (ILAB) with a diagnostic trip to Colombia to assess improvements in the Colombian Ministry of Social Protection’s mediation and conflict resolution system.

**Africa:** FMCS mediators trained arbitrators and mediators in Ghana, Nigerian judges in alternative dispute resolution techniques, and provided outreach on collective bargaining and freedom of association in Botswana, Mozambique, Namibia, South Africa and Swaziland.

**Eastern Europe:** In collaboration with the American Bar Association and various USG agencies, FMCS provided institutional design and training assistance to newly-established mediation agencies in Bulgaria, Hungary, and Poland. Agency mediators assisted in the training of new mediators in Romania as part of a U.S. Department of State public diplomacy program and trained labor, management, and government officials in collective bargaining techniques and dispute resolution in Serbia, Montenegro, and Croatia.

#### **IV. Conclusion**

In sum, FMCS has extensive experience and a record of success in delivering labor relations and conflict resolution training and capacity building around the world. During periods of economic instability and transitions from planned to market economies, FMCS professional mediators help workers, employers, and government officials learn how to engage in collective bargaining and interest-based problem solving, how to set up and run cooperative committees, and how to use mediation and arbitration to resolve conflict.

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## Attachment 1

### Ten Year Sample of FMCS International Programs and Services

**Argentina:** FMCS worked with the U.S. Department of Labor to strengthen the capacity of the Province of Córdoba to conciliate labor disputes at a time of deep economic recession, a huge volume of employee dismissals, and a backlog of worker complaints against employers for non-compliance with various legal requirements. In phase one of the project, FMCS commissioners trained conciliators and labor inspectors in techniques of interest-based problem solving. In phase two, private sector labor relations practitioners were trained in “win-win” negotiation techniques. Additional training was provided to conciliators from seventeen provinces of Argentina, a group that, with “train the trainer” instruction from FMCS, became the Federal Mediation Training Team.

**Asia-Pacific Economic Cooperation (APEC):** FMCS worked on several projects involving APEC. (1) FMCS coordinated a Symposium on Best Practices in Labor-Management-Government Cooperation in conjunction with the Bureau of International Labor Affairs (ILAB) at the U.S. Department of Labor (DOL) and the APEC Human Resources Development Working Group in Mexico City. The Symposium brought together labor relations practitioners, government officials and academics from throughout the Asia Pacific region. The event highlighted several models of tripartite cooperation for possible use in the participants’ home economies. A Best Practices Tool Kit was created to serve as a guide for others interested in launching labor-management cooperative initiatives. (2) Another project, called “Training for the Prevention and Resolution of Labor and Employment Disputes” provided training on new techniques for labor and employment dispute resolution and surveyed the APEC region’s governmental conciliation institutions to provide an overview of best dispute resolution practices. FMCS trainers taught techniques for mediating interest-based negotiations and preventing labor conflict. They also trained in, among other things, cross-cultural issues in employment conflict, gender issues in labor and employment dispute resolution, the role of rumor and hearsay in perpetuating conflict, mediation of multi-union disputes, and change management issues and their impact on labor and employment conflict.

**Baltic States:** FMCS provided basic dispute resolution training for labor, management, and government officials in Latvia, Estonia, and Lithuania. In a follow-up event, FMCS delivered a two-week training program that exposed one mediator candidate from each of the three countries to methods of dispute resolution, mentoring by FMCS mediators, and site visits in six states. After a special orientation by FMCS and the U.S. Baltic Foundation in Washington, DC, these three candidates joined the FMCS New Mediator class of 21 federal mediators. Following the training, the three candidates shadowed FMCS mediators conducting dispute resolution and relationship development training work in several U.S. cities.

**Brazil:** Twenty senior labor solicitors from the Brazilian Ministry of Public Labor visited FMCS for a training program sponsored by the ILO. The Ministry of Public Labor enforces a number of labor laws (e.g. wage and hour, health and safety, pensions) and is required by law to attempt to conciliate disputes prior to prosecution. The Brazilian officials learned mediation techniques, interest-based problem solving, the dynamics of multiparty negotiations, and ethical considerations in dispute resolution.

**Bulgaria:** FMCS hosted a two-week visit by a delegation that included 14 high level officials from labor, management, government and the ILO to observe various models for resolving labor-management disputes. The group witnessed an arbitration and a mock mediation, met with numerous officials, and received assistance in developing an action plan for creating a government labor conflict resolution institution. FMCS also conducted training for 35 incoming mediators of the newly formed National Institute for Conciliation and Arbitration (NICA) and then delivered a follow-up training in advanced techniques for the prevention and resolution of labor conflict.

**Cambodia:** FMCS delivered an interactive training program to arbitrators appointed to the Cambodian Labor Arbitration Council. The arbitrators were divided into small groups, where they identified the most common problems they confronted in their work with employers and unions. They were then trained in the techniques of interest-based negotiations and conducted mock arbitrations to improve their skills.

**Colombia:** This project was delivered under the auspices of the ILO's *Project for the Improvement of Labor Relations and the Promotion of Economic Equality for Women in Colombia*. The goal was to increase tripartite leaders' awareness of the economic and social value of labor dispute resolution and prevention processes, such as mediation, interest-based problem solving, and labor-management workplace committees. This program also included presentations from companies and unions that had dramatically improved their relationships to meet the challenges of globalization. Similar programs were delivered in other cities in Colombia. FMCS returned to Bogotá and Cartagena to help National Ministry of Labor officials build their capacity to provide services and formulate policy in the area of labor relations and dispute resolution training.

**Croatia:** Under the auspices of the AFL-CIO's American Center for International Labor Solidarity (Solidarity Center), FMCS Commissioners provided a series of joint training programs for approximately 50-60 representatives of labor, management and government in Croatia. The purpose of the trainings was to provide the participants with an in-depth familiarization of the collective bargaining process, including communications and negotiations skills, substantive training in the history and practice of collective bargaining, and presentation/train-the-trainer skills. As a result of these programs, several participants served, either individually or jointly, as trainers, resource persons and "agents of change" in their respective organizations.

**East Africa:** FMCS mediators provided a week of training in negotiations, conciliation and mediation skills to 65 labor officials from Kenya, Uganda, and Tanzania. This workshop was part of an ILO program aimed at collective bargaining and freedom of association

rights pursuant to the 1998 Declaration of the Fundamental Principles of Rights at Work. At the conclusion of the session, the participants brainstormed and developed an Action Plan to continue the diffusion of the techniques taught in the course. A number of participants went on to assume leadership roles in their country's ADR communities.

**European Union:** FMCS provided guidance on establishing governmental labor mediation services at a *Workshop on Social Dialogue and Conflict Resolution Mechanisms* for five EU acceding states -- Latvia, Lithuania, Slovakia, Cyprus and the Czech Republic. The Workshop was organized around breakout sessions, in which the five acceding countries met in their own language: (1) to assess the state of their current systems for conflict resolution; (2) to assess their future challenges for conflict resolution; and (3) to draft National Development Plans. Each country group received feedback from FMCS and other EU experts at each stage of the process, as well as presentations about mediation systems. A follow-up meeting was held to help the acceding countries implement their National Development Plans and to provide training, information, and networking opportunities to an additional five acceding EU countries (Poland, Hungary, Malta, Estonia and Slovenia).

**Ghana:** FMCS commissioners helped design and deliver a one-week training course for National Labor Commission arbitrators and mediators. The course covered, among other things, negotiations, dispute settlement mechanisms, the mediation process, and practical examples of the settlement of industrial disputes.

**Hungary:** FMCS assisted with the establishment of the Hungarian Mediation & Arbitration Service. Pursuant to several Memoranda of Understanding, FMCS commissioners delivered training programs for newly hired mediators, as well as more advanced programs for experienced mediators.

**Indonesia:** FMCS mediators spent two weeks in Indonesia as special industrial labor consultants for an ILO/USA Declaration Project. They conducted two events: (1) a "National Meeting on Conciliation and Mediation Training" which brought together over forty participants, consisting of high level government officials, mediators from the Indonesian offices of Industrial Relations and Labor Standards, and trade union and employers' representatives, to expose the parties to U.S. mediation and labor dispute prevention models; (2) a three-day skill-building mediation course for mediators from the central and provincial governments, covering the theories and techniques of alternative dispute resolution, interest-based problem solving, and a four-step mediation model. Another project in Indonesia was conducted under the auspices of the ILO's Project "Promoting and Realizing Freedom of Association and Collective Bargaining." FMCS trained senior Indonesian mediators and labor relations professionals in: (1) Mediation Skills for the Workplace and the Community; (2) Joint Problem-Solving, Interest-Based Bargaining, Consensus Decision-Making and Negotiation Skills; and (3) Labor-Management Cooperation and Formation of Worksite Labor-Management Committees.

**Korea:** FMCS trained professors and conciliators from the Korea Labor Education Institute (KLEI) in the timing and use of various Preventive Mediation (PM) programs, as well as techniques for their delivery. The Korean participants then "shadowed" FMCS mediators

delivering PM programs in the Seattle area. In another project, FMCS, along with the Irish Labor Relations Commission, the British Advisory, Conciliation & Arbitration Service, and the ILO, participated in a KLEI-sponsored International Symposium on Labor-Management Cooperation in the Workplace, at which participants discussed the structure, process and methodology of providing governmental labor dispute resolution and prevention services.

**Mozambique:** FMCS collaborated with DOL to deliver a multi-phase, capacity enhancing program for the Mozambican Ministry of Labor. In phase one, business, labor and government leaders were trained in interest-based bargaining, consensus decision-making, active listening, communication skills and teambuilding. In phase two, FMCS trained a cadre of Mozambican business and labor leaders at the enterprise level to provide them with a basic understanding of labor-management relations, their roles and responsibilities as stewards and supervisors, interest-based problem solving, consensus decision-making, and teambuilding. FMCS also trained mediators from the National Ministry of Labor in interest-based problem solving processes. In phase three, FMCS worked with the Labor Ministry and other tripartite stakeholders to develop sustainable programs for the Mozambican labor relations community, including a "train-the-trainer" course for cooperative labor relations techniques, and the creation of a steering committee to launch a new Tripartite Training Team.

**Panama:** This project was a multi-year systems-design, training, facilitation, and institution-building project that took place in partnership with the Panama Canal Commission and Panama Canal Authority (ACP). The objective was to develop the Republic of Panama's capacity to mediate labor-management and other disputes related to the Canal. In phase one of the project, FMCS trained and mentored a corps of Panamanians in the skills and techniques of mediation and facilitation. In phase two, FMCS worked with Panamanian leaders to prepare a comprehensive systems design for the establishment of an Independent Mediation and Conciliation Service, including the development of a mission statement, key policies and procedures, an organizational structure, provisions for the certification of mediators, rules of mediator ethics, human resources policies, a case management system, an information management system, budgetary policies and procedures, a financial management system, and policies and procedures for monitoring and evaluation. FMCS has continued to work with ACP and the Panama Canal Labor Relations Board, training two sets of Labor Board members and a group of sixty arbitrators to handle labor-relations disputes at the Canal. In July 2011, FMCS will train new senior managers.

**Peru:** With funding from DOL, FMCS trained labor and management representatives from the National Council for Labor & Employment Promotion, as well as officials from various cities throughout the country. In order to ensure the long-term capacity and sustainability of this mediation and dispute resolution training, a cadre of Peruvian trainers was established, and FMCS provided consulting services and training for legally recognized, extra-judicial (private) labor conciliations.

**Philippines:** Through multi-year projects and exchanges, FMCS worked with the Philippine National Conciliation and Mediation Board, shared the American experience

with labor-management committees, trained on Preventive Mediation (PM) techniques and Technology Assisted Group Solutions (TAGS), met with key representatives from labor, management, and government, and hosted Philippine officials at FMCS labor-management conferences.

**Romania:** With funding from the State Department's Democracy and Human Rights Program, FMCS mediators traveled to Craiova, Romania, to deliver a Mediation Skills Seminar for trial judges, appellate judges, Ministry of Justice officials, and practicing attorneys.

**Serbia and Montenegro:** With USAID funding, FMCS trained unions, employers, and government agencies in the prevention and resolution of labor conflict. In the design phase of the project, FMCS mediators met with key labor, management, and government officials, separately and in focus groups, to discuss their training needs and the advantages of broad tripartite involvement in the project. Following these meetings, FMCS designed a series of trainings emphasizing tripartite cooperation in collective bargaining and interest-based problem solving, contract administration, grievance handling, the formation of labor management committees, and advanced problem-solving techniques. FMCS also assisted with the analysis and development of a mediation service model.

**Taiwan:** In October-November 2010, FMCS was invited by the Council of Labor Affairs (CLA), the Taiwanese Ministry of Labor, to provide training for new mediators and for labor, management, and government officials in Taiwan as well as in the United States. This request was part of a new Labor Cooperative Agreement approved by the US State Department, the American Institute in Taiwan (AIT), and the Taiwanese government. A team of three FMCS mediators went to Taipei and conducted two weeks of training in collective bargaining for representatives from unions, companies, and the government, and training in dispute resolution and mediation for third party neutrals who resolve employment disputes. The training included lectures, role-plays, DVDs, and discussions in Chinese and English. A similar training is planned for the fall of 2011.

**Tajikistan:** Partnering with the Center for Intercultural Education & Development at Georgetown University, FMCS trained Tajik diplomats in techniques for successful negotiation, problem solving, and decision-making in crisis situations. The training formed part of a two-week program for Tajikistani diplomats sponsored by the U.S. Department of State.

**Vietnam:** Under the auspices of the ILO's Hanoi office, FMCS provided training for officials from the government, management and labor sectors in techniques of interest-based problem solving for collective negotiations as well as related labor relations skills, such as consensus decision making, the formation and maintenance of labor-management worksite committees, joint problem solving, and non-defensive communication. The ILO's Vietnam Project was headed for more than six years by an FMCS mediator on leave of absence from the Agency. FMCS continues to provide training programs in Vietnam several times a year.